

ATASCADERO HIGH SCHOOL MARCHING BAND PLAYS AT POLITICAL CANDIDATE'S CAMPAIGN RALLY

On Sunday, September 28, 2003 the Atascadero High School Marching Band played at a political rally for then candidate for governor, Arnold Schwarzenegger. To some county residents, this appeared to be in violation of the California Education Code, which prohibits use of school resources for political purposes. Reports of the story in local newspapers included an opinion from the California Department of Education deputy legal counsel indicating that, if asked, he would have advised against the band playing. Within weeks of the event, the Grand Jury received two complaints from citizens citing this and other news reports, and expressing concern that the Atascadero Unified School District had violated the law in permitting the band to play at the rally.

Authority for the Inquiry

The authority for the Grand Jury to inquire into this matter is given in Section 933.5 of the California Penal Code: "The grand jury may at any time examine the books and records of any special-purpose assessing or taxing district located wholly or partly in the county or the local agency formation commission in the county, and, in addition to any other investigatory powers granted by this chapter, may investigate and report upon the method or system of performing the duties of such district or commission."

Overview

The Atascadero Unified School District (AUSD) is responsible for the operation and supervision of thirteen schools, including Atascadero High School. The schools are located in the northern part of the county, serving the communities of Atascadero, Creston and Santa Margarita. The district is governed by a Board of Trustees consisting of seven members who are publicly elected to four-year terms. The Board establishes the policies that govern the operations of the schools in the district, and hires the District Superintendent, who is responsible for policy implementation.

Many of the Board policies reference the California Education Code, which sets the legal requirements for public schools in the state. The section of the code relevant to this inquiry is 7054(a), which states:

No school district or community college district funds, services, supplies, or equipment shall be used for the purpose of urging the support or defeat of any ballot measure or candidate, including, but not limited to, any candidate for election to the governing board of the district.

The applicable AUSD policy mirrors and references this section, and reads:

No district funds, services, supplies or equipment shall be used to urge the support or defeat of any ballot measure or candidate, including any candidate for election to the Board. (Education Code 7054)

Section 7058 of the Education Code further clarifies 7054 as follows:

Nothing in this article shall prohibit the use of a forum under the control of the governing board of a school district or community college district if the forum is made available to all sides on an equitable basis.

Since the band performance in question occurred at a political rally for a gubernatorial candidate, some residents questioned whether it violated the Education Code and AUSD policies. The performance was requested by Assemblyman Abel Maldonado, and the expenses for it were billed to his office. Nevertheless, some individuals question whether this is adequate to counter the perception that AUSD resources were used to support a political candidate.

Method

We obtained the information reported here through review of AUSD policies, correspondence and an interview with the AUSD Superintendent, and an interpretation provided by legal counsel for AUSD. The Grand Jury requested and received the applicable AUSD policies and procedures related to the band playing at the rally, as well as information regarding the payment of the expenses incurred. Jurors interviewed the superintendent and reviewed the related documents.

Description of Inquiry

In providing information on behalf of the district, the superintendent repeatedly emphasized that the band performance at the rally was never intended to show support for a candidate, but was considered to be simply an opportunity for the band to perform. Given the political nature of the rally, specific concerns included whether AUSD funds were used, whether students were required to participate, and whether the decisions relative to the band playing at the rally were made in accordance with district policies and public considerations. Our findings are summarized below.

(1) The AUSD Request for Transportation form details that there were two buses used for seventy-five students and ten adults to attend the rally in Santa Maria on September 28, 2003. The charges for the two bus drivers, bus mileage, and meals are itemized in accordance with the AUSD 2003/2004 Transportation Rates. The mileage rate includes an allocation for vehicle maintenance and insurance. The listed expenses totaled \$718.85.

(2) An invoice for \$718.85 was sent to Assemblyman Maldonado at his office in San Luis Obispo, and was paid by a check on an account of "Californians for Schwarzenegger" dated November 18, 2003.

(3) The band members were not required to participate. The band's performance at the rally was considered to be an extracurricular field trip, for which parental approval was necessary. One family did not approve and the band member did not perform.

(4) The decision to allow the band to perform at the rally was made by the principal of Atascadero High School. This is the appropriate level for approval of field trips, according to the district's organizational delegation of authority. The principal sought additional review because the performance had the potential for appearing to support a political candidate. In the absence of the superintendent, the principal consulted with the Assistant Superintendent of Educational Services, who concurred that the field trip was appropriate.

(5) The interpretation of the AUSD legal counsel, requested after the fact, supports the decision to allow the band to perform. The legal opinion was provided in writing at the request of the Grand Jury, and highlights the reimbursement for the AUSD expenses relating to the performance. The legal counsel's concluding remarks are as follows:

In this instance, where no District funds were expended, the activity was voluntary, it was not during school hours, and the intent of the District administration was to provide students with an opportunity to perform publicly, there was no violation of Education Code section 7054 (a).

The District's Board and administration has the discretion to determine that there is an educational benefit to AUSDHS band students performing publicly. Such a determination is appropriate given that public performance is a natural part of learning to play a musical instrument in any band. Had the students been provided with the same opportunity to perform for other candidates, and the students were able to perform, the intent and impartiality of the District administration might be more easily understood. But the lack of additional invitations and opportunity cannot convert the proper intent of the administration to an improper intent.

While the District must avoid using District funds, services, supplies and equipment for the purpose of supporting or opposing particular candidates or issues, it is nevertheless our opinion that the AUSDHS Band may voluntarily participate in a public performance, even at a political event, where no District funds are expended, and the intent is not to support the candidate, but rather to provide students with the opportunity to perform publicly.

Conclusion

The issues surrounding the band performance at the political rally appear to be a matter of legal interpretation. A conclusive opinion would have to come through the courts or further legislative action. The decision to allow the band to perform in this instance, however, was made within the spirit and intent of the law as interpreted by the AUSD legal counsel and consistent with District policy. A new or changed policy that would direct a different decision regarding marching band performances is a matter for the AUSD Board of Trustees to consider.

Required Responses

This is an informational report. No formal response to this 2003-2004 Grand Jury report is required from any agency.